

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Vonnie Darin Darby,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	
Tim Schuetzle, Warden,)	
)	Case No. 1:08-cv-110
Defendant.)	

The plaintiff, Vonnie Darby, is an inmate at the North Dakota State Penitentiary. He initiated this action by filing a pro se complaint on December 29, 2008 wherein he alleged violations of 42 U.S.C. § 1983. See Docket No. 2-1.¹ On January 27, 2009 and February 3, 2009, Darby filed supplements to the complaint, alleging that his double jeopardy rights were also violated. See Docket Nos. 10 and 11. On March 6, 2009, the defendant, Tim Schuetzle, warden of the North Dakota State Penitentiary, filed a “Motion for Summary Judgment.” See Docket No. 19. On March 18, 2009, Darby filed a response in opposition to the motion. See Docket No. 23. On March 20, 2009, Schuetzle filed a reply brief. See Docket No. 24. On April 3, 2009, the Court allowed Darby to file an amended complaint to include demands for compensatory damages, punitive damages, and injunctive relief. See Docket No. 25. Darby filed an amended complaint on April 3, 2009. See Docket No. 26.

Magistrate Judge Charles S. Miller, Jr. conducted a review of the record and relevant case law and submitted a Report and Recommendation on February 24, 2010. See Docket No. 41. Judge Miller recommended that Schuetzle’s motion for summary judgment be granted and that Darby’s amended complaint be dismissed with prejudice. See Docket No. 41. Darby was given fourteen (14) days to file an objection to the Report and Recommendation. Darby did not file an objection.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the record as a whole, and finds the Report and Recommendation to be persuasive. Accordingly, the Court

¹ Darby re-filed the complaint on January 6, 2009. See Docket No. 7.

ADOPTS the Report and Recommendation (Docket No. 41) in its entirety, **GRANTS** the Defendant's "Motion for Summary Judgment" (Docket No. 19), and **DISMISSES** the amended complaint (Docket No. 26) **WITH PREJUDICE**.

IT IS SO ORDERED.

Dated this 22nd day of March, 2010.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge
United States District Court